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REMARKS

The above Amendments and these Remarks are in reply to the Office Action mailed October 12, 2006. Claims 1-104 were pending in the Application prior to the outstanding Office Action. The Examiner rejected claims 1-77 and 83-104 and objected to claims 78-82. Further, provisional non statutory obviousness-type double patenting rejections were made against claims 85-104.

The Examiner is thanked for granting an interview with the Applicant on Monday December 4, 2006 at 17:00 PST. In the interview, the Examiner explained that claims 78-82 were objected to as being dependent on a rejected independent claim. Further, the Examiner indicated that an amendment that incorporated the calcium/potassium double salt combination described in the specification would obviate the grounds for the 35 U.S.C. §112, first paragraph rejection.

Claims 1, 43, 78 and 85 have been amended. Claims 2-8, 12-17, 19-24, 26-31, 35, 44-50, 54-57, 61-65, 68-71, 77 and 86-92 have been cancelled. Applicants reserve the right to prosecute all cancelled or withdrawn claims in continuation or divisional applications derived from this application. Claims 1, 9-11, 18, 25, 32-34, 36-43, 51-53, 58-60, 66-67, 72-76, 78-85 and 93-104 remain for the Examiner's consideration. Reconsideration and withdrawal of the rejections and objections is respectfully requested.

DOUBLE PATENTING

Because it is unclear what claims may be allowed in this application or in co-pending application number 09/463,024, or what the precise language of those claims might be, the Applicants will address this issue more completely should claims in these applications be found to be allowable.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112

Claims 1-42 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Examiner states that there are no working examples directed to administration of a compound of hydroxycitric acid that is bound to a Group IA or group IIA metal to form a single, double salt or triple in a model where a reduction in serum grehlin levels is demonstrated.

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Claims 2-8, 12-17, 19-24, 26-31 and 35 have been cancelled. With respect to Claims 1, 9-11, 18, 25 and 32-34 and 36-42, the Applicant believes the specification as filed at least meets the written description requirement with respect to hydroxycitric acid bound to calcium and potassium. The Applicant directs the Examiner to paragraph [00034], first sentence which introduces a chart showing administration of HCA-SX. Further, the Examiner is directed to paragraph [00036], first and second sentences, where the Applicant indicates that HCA-SX is the calcium/potassium double salt of hydroxycitric acid.

The Applicant has given a working example of hydroxycitric acid bound to calcium and potassium. Since this example is directed to administration of a compound leading to a reduction in serum grehlin, the Applicant respectfully submits that the written description requirement has been met.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

Claims 1-10, 43-52 and 85-94 were rejected under 35 U.S.C. §102(b), as being anticipated by Clouatre et al., U.S. Patent 6,447,807 (hereinafter *Clouatre*).

Claims 2-8, 44-50 and 86-92 have been cancelled. Claims 1, 43, and 85 have been amended.

Amended Claims 1, 43 and 85 recite the limitation “wherein the hydroxycitric acid is bound to calcium and potassium”. *Clouatre* discloses the potassium salt of hydroxycitric acid, Column 5, lines 11-12. *Clouatre* also discloses other single salts of hydroxycitric acid including sodium, calcium and magnesium and mixtures or combinations of two single salts of hydroxycitric acid, Column 4, lines 62-67. *Clouatre* continues “[h]ence the calcium and magnesium salts, either alone or in the form of various mixtures together or in combination with the potassium and sodium salts, are not preferred delivery forms for HCA”, Column 3, lines 10-13. Thus *Clouatre* makes it clear that the mixtures or combinations referred to are mixtures of a calcium salt alone or a magnesium salt alone mixed with a potassium salt or a sodium salt. No where does *Clouatre* disclose that the hydroxycitric acid should be bound to more than one cation forming a double salt of hydroxycitric acid, a supplier of a double salt of hydroxycitric acid or alternatively a method of preparing a double salt of hydroxycitric acid. Accordingly, *Clouatre* cannot be said to disclose hydroxycitric acid bound to more than one cation. Since

Clouatre does not disclose hydroxycitric acid bound to calcium and potassium, it does not disclose every limitation of amended Claims 1, 43 and 85.

Anticipation by Inherency Rejection

The Examiner states that "Applicants are claiming an unknown property that is inherently present in the prior art compositions". The Applicant respectfully disagrees. In Ex Parte Novitski the court found that an inventor's use of a compound, *P. cepacia* type Wisconsin 525, for inoculating a plant and thereby protecting a plant from pathogenic nematodes was inherently disclosed when the specification taught inoculating a plant with *P. cepacia* type Wisconsin 525 and also taught that *P. cepacia* type Wisconsin 525 possessed an 18% nematode-inhibition rating. Ex Parte Novitski, 26 USPQ2d 1389 (BOPA 1993). That is, when the property of a compound being claimed is inherently disclosed in the prior art or in the applicant's disclosure then the claim is held to be inherently disclosed. In contrast, the Applicants have identified that the administration of hydroxycitric acid double salt to mammals results in reduced grehlin levels in mammals. This is a novel property of a compound, where neither the property nor the compound is taught or suggested by *Clouatre* and where the property is not disclosed as being an intrinsic property of the compound in the Applicant's specification.

Claims 9-10, 43, 51-52, 85 and 93-94 each depend from independent Claims 1, 43 and 85 and are believed patentable for at least the same reasons as independent Claims 1, 43 and 85 and because of the additional limitations of these claims. As such, Claims 9-10, 43, 51-52, 85 and 93-94 are not anticipated by *Clouatre*.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 1-77 and 83-104 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Clouatre*.

Amended Claims 1, 43 and 85 recite the limitation "wherein the hydroxycitric acid is bound to calcium and potassium". *Clouatre* discloses the potassium salt of hydroxycitric acid, Column 5, lines 11-12. *Clouatre* also discloses other single salts of hydroxycitric acid including sodium, calcium and magnesium and mixtures or combinations of two single salts of hydroxycitric acid, Column 4, lines 62-67. However, *Clouatre* does not teach or suggest a double salt of hydroxycitric acid. Since *Clouatre* does not teach or suggest hydroxycitric

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acid bound to calcium and potassium it does not teach or suggest every limitation of Claims 1, 43 and 85.

Claims 9-11, 18, 25, 32-34, 36-42, 51-53, 58-60, 66-67, 72-76, 83-85 and 93-104 each depend from independent Claims 1, 43 and 85 and are believed patentable for at least the same reasons as independent Claims 1, 43 and 85 and because of the additional limitations of these claims. Therefore, *Clouatre* does not anticipate the currently amended Claims 11, 13 and 14. As such, Claims 9-11, 18, 25, 32-34, 36-42, 51-53, 58-60, 66-67, 72-76, 83-85 and 93-104 were not obvious over *Clouatre* at the time the invention was made.

CLAIM OBJECTIONS

Claims 78-82 were objected to as being dependent on a rejected claims base. The Applicant believes that the Examiner intended to object Claims 78-83. The Applicant has amended Claim 78 incorporating the limitation of original independent claim 43. As such, Applicant believes that since these claims were not involved in either the double patenting, §112, §102 or §103 rejections, Claims 78-83 are in condition for allowance.

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CONCLUSION

In light of the above, it is respectfully requested that all outstanding rejections and objections be reconsidered and withdrawn.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this amendment, including any fee for extension of time, which may be required. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of the patent.

Respectfully submitted,

Dated: 12/7/06

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